

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WARREN THEO TRENHAILE,

Plaintiff,

Civil No. 04-1523-CO

v.

FINDINGS AND
RECOMMENDATION

BUREAU OF PRISONS,

Defendant.

COONEY, Magistrate Judge.

Plaintiff, a federal prisoner proceeding pro se, filed a civil rights action pursuant to Bivens v. Six Unknown Federal Agents, 403 U.S. 388 (1971) in the Eastern District of California. The action was transferred to this district pursuant to federal venue statute 28 U.S.C. § 1391 on the grounds that none of the defendants reside in the Eastern District of California and because the claim arose at FCI Sheridan, which is in the District of Oregon.

On November 1, 2004, plaintiff was ordered to pay a filing fee or complete an application to proceed in forma

pauperis (#6). By Order (#8) entered December 28, 2004 plaintiff was ordered to show cause within 30 days why this case should not be dismissed for lack of prosecution and for failure to comply with the court's order to either pay the filing fee or file for in forma pauperis status.

Plaintiff has filed three motions to proceed in forma pauperis (#7), (#10) and (#13), none of which comply with the court's order.

Contrary to what plaintiff might think, he *is* required to pay the filing fee and must agree to do so on the form provided by the court before being allowed to proceed without the *prepayment* of the fee.

By Order (#14) entered March 1, 2005, the Clerk of the court was requested to send plaintiff another application and plaintiff was allowed 30 days from the date of this order to file a completed, signed, **unaltered** application. Plaintiff was advised that failure to file a application consistent with the court's order or to pay the filing fee within 30 days would result in the dismissal of this action for failure to prosecute.

Plaintiff has not filed a proper application, paid the filing fee, or requested an extension of time in which to do so. Therefore, this action should be dismissed without prejudice for failure to prosecute.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice

of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten (10) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this ____ day of April, 2005.

S/
John P. Cooney
United States Magistrate Judge